upheld. As the cases indicate, it is quite impossible to harmonize the holdings or to formulate a rule by which it may be judged whether such a trust is too indefinite. The principal case is one of first impression in New Mexico and would seem correctly decided. This is especially so in view of the fact that the trustees were willing to act and a discretion had been vested in them as a means for making the trust more certain.

WATERS AND WATER COURSES—NO RIPARIAN RIGHTS IN MONTANA.—Plaintiff owned lands through which a stream flowed; defendant, by virtue of an appropriation duly made, diverted all the water in the stream and used it for irrigation purposes. Plaintiff, claiming only as a riparian owner, sued to enjoin defendant's diversion of the stream on the ground that it was an invasion of riparian rights. *Held,* that the common law doctrine of riparian rights does not prevail in Montana, and that plaintiff's complaint does not state a cause of action. *Mettler* v. *Ames Realty Co.* (Mont., 1921), 201 Pac. 702.

The question here decided has long been a vexed one. There has been no doubt that appropriation has been legal in Montana, as in most of the western states, "probably from the first moment that they knew of any law," as Mr. Justice Holmes says in *Bean* v. *Morris,* 221 U. S. 485. The question has been whether the doctrine of riparian rights has also existed, side by side with the doctrine of appropriation, as in California, or whether riparian rights have been rejected as unsuited to the climatic conditions, as in Colorado. It is remarkable that until the principal case no litigation has arisen in Montana which required a clear decision on the point. Earlier cases have contained *dicta* which support both sides. The opinion of the text-writers has favored the view that the California rule was applied in Montana. WIEL, WATER RIGHTS (Ed. 3), § 117, includes Montana among the states which recognize the "combined system of appropriation and riparian rights existing side by side," stating in a footnote that "*Smith* v. *Denniff,* 24 Mont. 20, had left room for doubt, but *Prentice* v. *McKay,* 38 Mont. 114, seems clear." LONG (IRRIGATION, § 18) comes to the same conclusion, citing the same authority. KINNEY (IRRIGATION, Ed. 2, Vol. 4, § 1880) says that the question is in doubt; he does not cite *Prentice* v. *McKay,* and apparently does not consider that it is in point. In the principal case the court takes the same view that was evidently taken by Mr. Kinney, and holds that *Prentice* v. *McKay,* in holding that riparian owners had rights which were superior to those of appropriators, referred only to the fact that appropriators could not trespass on riparian land for the purpose of initiating an appropriative right. In other words, the riparian right protected by that decision was a land right, not a water right, and the decision was therefore not controlling in the principal case. In view of the fact that the riparian right to the use of water has apparently been completely ignored in Montana, the case is not one of very great practical importance, but it is interesting as finally determining the view of the court on the question involved.